U. S. 146; *Gilbert & Banker Mfg. Co.* v. *Butler* (1887) 146 Mass. 82, 15 N. E. 76. While some courts allow the plaintiff under such circumstances to recover what his services were actually worth, irrespective of the contract price, *Johnston* v. *Pump Co.* (1918) 274 Mo. 414, 202 S. W. 1143; *Hemminger* v. *Western Assur. Co.* (1893) 95 Mich. 355, 54 N. W. 949; others, confusing the true nature of the action, limit the plaintiff's recovery to the contract price, although the reasonable value of the services rendered exceeded the price stipulated. *Edward Thompson Co.* v. *Decker* (1916) 200 Ill. App. 179; *Manufacturing Co.* v. *Investment Co.* (1913) 179 Mo. App. 447, 162 S. W. 691; *cf. Ludlauss* v. *Dale* (1875) 62 N. Y. 617; *Sprague & Wife* v. *Morgan & Wife* (1845) 7 Ala. 952. And where the services to be rendered by the injured party have been fully performed before the defendant's breach, many jurisdictions totally deny the plaintiff the right to restitution, *Anderson* v. *Rice* (1852) 20 Ala. 239; *Reams* v. *Wilson* (1908) 147 N. C. 304, 60 S. E. 1124; *Shropshire* v. *Adams* (1905) 42 Tex. Civ. App. 339, 89 S. W. 448; or, if the performance has given rise to a debt, allow the plaintiff to sue in *indebitatus assumpsit,* but make the measure of damages what the defendant promised to pay and not what the services were worth. Woodward, Quasi Contracts § 262; Sedgwick, Damages (9th ed.) 655f; see *Boyd* v. *Gale* (1903) 84 App. Div. 414, 82 N. Y. Supp. 932; *contra, Metcalf* v. *Gilbert* (1911) 19 Wyo. 331, 116 Pac. 1017. A defendant in default is generally made to return money received by him from the plaintiff, *Nash* v. *Towne* (1866) 72 U. S. 689, and it would seem that with equal justification he should be forced to return the value of services received by him from the plaintiff. And where, as in the instant case, the promise is not one to pay an express amount, but is to pay the reasonable value of services, the rule that restitution will be denied a plaintiff who has fully performed before the defendant's breach, is never applied; the measure of damages, whether the promise be express or implied, is the same in either general or special *assumpsit,* and the courts, therefore, permit recovery in *quantum meruit. Succession of Palmer* (1915) 137 La. 190, 60 So. 405; *Porter* v. *Dunn* (1892) 131 N. Y. 314, 30 N. E. 122; *Reynolds* v. *Robinson* (1876) 64 N. Y. 589. It is submitted that the principal case is sound and in accord with the weight of authority.

CONTRACTS—DEFENSES AVAILABLE AGAINST BENEFICIARY.—In an action by a materialman against the surety on a contractor's bond to pay for all materials used in a certain building, the surety pleaded nonperformance of a condition precedent by the obligee of the bond, who was the owner of the building, in failing to give notice of the default of the principal debtor. *Held,* three judges dissenting, the rights of the materialmen as beneficiaries became fixed upon furnishing the material and could not be defeated by the failure of the obligee to give notice. *Forburger Stone Co.* v. *Lion Bonding & Surety Co.* (Neb. 1919) 170 N. W. 897.

The cases seem to establish that the right of a beneficiary to sue the new promisor is not derived from or subordinate to his right

against the original debtor but exists independently of such right. Thus in the case of a promise by a third party to pay a debt, the creditor has rights against the new promisor which are not affected by defenses existing between the original debtor and himself, such as usury, *Log Cabin, etc., Ass'n* v. *Gross* (1889) 71 Md. 456, 18 Atl. 896; *Jones* v. *Insurance Co.* (1884) 40 Oh. St. 583; *Hartley* v. *Harrison* (1861) 24 N. Y. 170; coverture, *Comstock* v. *Smith* (1873) 26 Mich. 306; see *Kennedy* v. *Brown* (1878) 61 Ala. 296; failure or want of consideration, *Crawford* v. *Edwards* (1876) 33 Mich. 354; *Freeman* v. *Auld* (1870) 44 N. Y. 50; or the Statute of Limitations. *Kuhl* v. *Chicago etc. Ry.* (1898) 101 Wis. 42, 77 N. W. 155; *Daniels* v. *Johnson* (1900) 129 Cal. 415, 61 Pac. 1107; see *Dwinnell* v. *McKibben* (1895) 93 Iowa 331, 61 N. W. 985. But the fact that the beneficiary's right against the new obligor is distinct from his right against the original debtor, does not mean that it is independent of the terms of the contract entered into by the new obligor, with the promisee. His action of assumpsit exists by virtue of that contract. If it contains conditions, the beneficiary must show the happening thereof, *Rusell* v. *Western Union Tel. Co.* (1896) 57 Kan. 230, 45 Pac. 598; *Fenn* v. *The Union etc. Co.* (1896) 48 La. Ann. 541, 19 So. 623; *Gill & McMahon* v. *Weller* (1879) 52 Md. 8; see *East* v. *Insurance Ass'n* (1899) 76 Miss. 697, 26 So. 691; so also the beneficiary will be defeated by equitable defenses inherent in the contract with the promisee, such as fraud, *Green* v. *Turner* (C. C. A. 1898) 86 Fed. 837; see *Wise* v. *Fuller,* (1878) 29 N. J. Eq. 257; *Arnold* v. *Nichols* (1876) 64 N. Y. 117; mistake, see *Wheat* v. *Rice* (1884) 97 N. Y. 296; *Green* v. *Stone* (1896) 54 N. J. Eq. 387, 34 Atl. 1099; or failure or want of consideration. *Dunning* v. *Leavitt* (1881) 85 N. Y. 30. On the other hand, defenses like release or rescission, which arise subsequently and exist entirely apart from the contract, are not available against the beneficiary, especially if he has already acted on the promise. *Waterman* v. *Morgan* (1888) 114 Ind. 237, 16 N. E. 590; *Knowles* v. *Erwin* (N. Y. 1887) 43 Hun 150, *aff'd.* 124 N. Y. 633, 28 N. E. 759; *Gifford* v. *Corrigan* (1889) 117 N. Y. 257, 22 N. E. 756. In the instant case both the action and the defense set up spring from the time of the original contract and hence the dissenting judges appear correct in insisting that it was part of the plaintiff's case to prove the happening of the condition.

DOMICILE—EXTRA-TERRITORIAL PRIVILEGES AS AFFECTING ITS ACQUISITION.—An English subject settled permanently in Egypt and married there. While temporarily in England his wife sued for divorce in an English court. The husband filed a plea to the jurisdiction of the court on the ground that his domicile was in Egypt. Under the system of extra-territoriality in force in Egypt, British subjects were not subject to the jurisdiction of the Turkish courts, but were to sue and be sued in the British Consular Courts, which had, however, no matrimonial jurisdiction. The trial court overruled the plea, and the Court of Appeal, in affirming the judgment, held it impossible in point of law for a British subject to acquire an Egyp-